In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/2182/2010-SM
(Out of Order-in AppealNo.224/KKG/CE/JPR-II/10 dated 28.04.2010 04.06.2010 passed by Commissioner (Appeals-II) Customs & Central Excise-II Jaipur)

M/s Surbhi Metals (I) P Ltd, …Appellant
Vs
CCE Jaipur-II …Respondent

Appearance:
Present for the Appellant : Sh OP Agarwal, Advocate
Present for the Respondent : Sh K.Poddar, DR

Coram: HON'BLE MR ASHOK JINDAL, MEMBER (JUDICIAL)

Date of hearing/decision:25.09.2017

Final Order No.56876/2017

Per Ashok Jindal,

The appellant is in appeal against impugned order wherein the refund claim filed by the appellant has been rejected.

2. The brief facts of the case are that the appellant upto 31.03.2008 was paying duty on the final products and availing cenvat credit on inputs. From 01.04.2008, the appellant opted to avail exemption under Notification No.8/2003 dated 01.03.2003 as there was no balance lying in the cenvat credit account but appellant inadvertently paid amount equivalent to cenvat credit attributable to inputs, semi-finished goods and finished goods lying in their stock on 31.03.2008 through PLA. Later on, realizing that they were not liable to reverse the cenvat

credit, the appellant filed refund of claim, the same was rejected by the lower authorities.. Aggrieved by the said order, the appellant is before me.

3. Heard both the parties.

4. Considering the fact that in the case of Ukaji Electricals & Transformers Vs CCE Jaipur vide final order No.A/1576-1578/2012-SM(BR) dated 27.11.2012, a similar issue came before this Tribunal and this Tribunal observed as under:

> I find that apart from the above decision, there are other decisions of the Hon’ble Himachal Pradesh High Court in the case of Commissioner of Central Excise, Chandigarh Vs Tyre Tops [2010 (250) ELT 338 (HP)]. The Hon’ble Himachal Pradesh High Court, by taking note of other decision of the Kerala High Court in the case of Collector Vs Premier Tyres Ltd . 2001 (130) 417 (Kerala) as also Rajasthan High Court decision in the case of Hindustan Zinc Ltd Vs Union of India, [2008 (223) ELT 149 (Rajasthan) as also be taking note of the Larger Bench decision in the case Ashok Kiron and Steel Fabricators [2002 (140) ELT 227 (Tri.-LB)] and the Supreme Court judgement in the by Dal Ichi Karkaria Ltd. 1999(112) ELT 353 (SC) has held that even though final product becoming exempt, assessee cannot be asked for reversal of the Modvat credit already taken and specially to pay the already used amount through cash.
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> Inasmuch the issue is decided by various decisions of the Tribunal holding that the appellant was not required to deposit the shortfall in

Cenvat credit account through PLA, I find no reasons to ask the asessee to pay the already utilized credit through PLA.

5. Therefore, relying on the decision of the Tribunal on identical facts, I hold that appellants are entitled to refund claim of the amount paid through PLA on account of cenvat credit attributable to inputs, semi-finished goods and finished goods lying in their stock on the date for opting exemption under Notification No.8/2003 dated 01.03.2003. Therefore, the impugned order is set-aside and the appeal is allowed with consequential relief.

(Pronounced & dictated in the open court)

(Ashok Jindal)
Member (Judicial)

pcs